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SUBJECT: PARDON ME, BUT I (DIS)RESPECTFULLY DECLINE

Classified By: POLCHIEF GPERGL FOR REASONS 1.4 b&d

¶1. (C) SUMMARY. On his final day in office, former president John Kufuor, in an act of exculpation that still has some scratching their heads, granted more than 500 pardons to a variety of Ghanaians ranging from political opponents to imprisoned nursing mothers. Several prominent political figures were among those pardoned, including a former finance minister, agriculture minister, trade minister, and youth and sports minister. The director of police operations involved in the huge loss of heroin in the MV Benjamin scandal was also reinstated in his job. The most conspicuous name on the list was Tsatsu Tsikata, a major figure in the National Democratic Congress (NDC) party who had been jailed for causing financial loss to the state. In a trial which many NDC party observers claimed was a political set-up orchestrated by Kufuor himself, Tsikata was sent to prison in June 2008 to serve a 5-year sentence. As if this pardon was not sufficiently surprising, the following day Tsikata repudiated the act of clemency and castigated Kufuor publicly for "desecrating justice," calling the gesture "the height of hypocrisy. I have never sought, and I do not need your pretense of mercy." On the same day as the pardons took place, Nana Konadu Rawlings had her three-year back-and-forth court case for defrauding the state "discontinued." END SUMMARY

¶2. (C) On January 7, just hours before leaving office, President Kufuor's spokesman announced that he had pardoned some 500 people "under his prerogative of mercy as enshrined in article 72 of the constitution." Included in this group were all first-time offenders who had served more than half of their terms, seriously ill prisoners, prisoners above age 70, and nursing mothers. More noteworthy, however, were the pardons of several ministers who had been imprisoned under a controversial law that jails government officials found guilty of "willfully causing financial loss to the State." Widely criticized as a tool for political vindictiveness by the NDC, the law was actually passed in 1993 under President Jerry Rawlings, but his NDC party rarely invoked it (perhaps because they had no scores to settle). Under Kufuor's administration, several ministers who served Rawlings (as well as Kufuor's own minister of youth and sports, who some thought was scapegoated to demonstrate political balance) were brought to court and jailed after being found guilty of financial malfeasance in office.

¶3. (C) All of these high-profile cases garnered considerable media attention, but none became more infamous than that of Tsatsu Tsikata, the former CEO of the Ghana National Petroleum Corporation (GNPC), who was charged under the law for his role in losing 230,000 Ghanaian Cedis (\$192,000) when a loan guarantee he had made on behalf of GNPC went bad. The saga of Tsatsu Tsikata is the stuff of Greek tragedy, and highlights the incestuous nature of Ghanaian politics. Tsikata was a brilliant and precocious student who obtained a first-class law degree at the University of Ghana at age 18, and went on to another law degree at Oxford. He became

involved in human rights cases during the regime of General Acheampong (1972-78), and as a lecturer at the UG's Faculty of Law from 1972-1988, he taught many current members of Parliament (as well as two of the Ministers of Justice under whose watch his trial was conducted). In 1979 Tsikata became counsel for Flt. Lt. Jerry Rawlings when he was on trial for subversion for his May 15 attempt to overthrow the military regime. Before the trial ended, however, Rawlings was busted out of jail on June 4 by fellow soldiers, who successfully reorganized the coup that very day and made Rawlings the head of the Armed Forces Provisional Council. From that time forward, Tsikata remained close to Rawlings and became involved in party politics, first with the Provisional National Defense Committee (PNDC), and beginning with Rawlings' first election in 1992, with the NDC. (NOTE: His cousin Kojo Tsikata is widely suspected as the mastermind behind the kidnapping and execution of three anti-Rawlings judges in 1982, but sufficient evidence to back up this claim has never been produced. END NOTE)

¶4. (C) In 1988, Tsikata was appointed chairman and acting CEO of the GNPC, a position he maintained until the end of Rawlings' presidential term in December 2000. The following year, Attorney General Nana Akufo-Addo (who ironically in 1980 had teamed with Tsikata in representing Chief Justice Fred Apaloo when President Limann attempted to remove him from the Supreme Court) brought charges against Tsikata for allowing GNPC to guarantee a loan to Valley Farms Limited, which GNPC had to pay off. (NOTE: Tsikata's supporters say that GNPC was involved in this loan because Valley Farms was specializing in a hybrid variety of cocoa whose export would earn Ghana more foreign exchange earnings needed for the

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importation of petroleum products by GNPC. END NOTE)

¶5. (C) From the very beginning of the trial process, the legal scholar Tsikata took control, first of all by challenging the constitutionality of the Fast Track Court system that President Kufuor had instituted. In a 5-4 decision, the Supreme Court sided with Tsikata, dealing Kufuor and Akufo-Addo a stunning blow, since the Fast Track Courts had just succeeded in jailing several Rawlings Ministers. (NOTE: One of the Justices voting with the majority was Joyce Bamford Addo, who was just elected Speaker of Parliament. END NOTE) Kufuor's reaction was to pack the Supreme Court with two more Justices sympathetic to his position, and when the case was re-heard, the decision was reversed. Through legal maneuvering, Tsikata managed to drag his case out over the course of six years, but all delays came to an abrupt halt on June 18, 2008. He had come to court that day without his lawyer for what he thought would be a simple motion for adjournment. Instead, trial judge Henrietta Abban (a former classmate of Tsikata's from university days), who had earlier described Tsikata's protracted court battle as "an albatross around my neck," unexpectedly laid down her judgment of five years in prison. The stunned Tsikata was hauled off immediately to prison by four police vans that had been pre-positioned outside the courtroom.

¶6. (C) Within days, the "Free Tsatsu" campaign began, and for the past six months, as part of its election campaign, the NDC pursued a relentless and parallel media campaign that focused narrowly on Tsikata's jailing without benefit of counsel, but more widely on alleged NPP abuse of the judiciary. At the same time, Tsikata's legal team was using the appeal process to prove that the court judgment was flawed, and to keep the case in the media arena. In the MP parking lot at Parliament House, every NDC car has a "Free Tsatsu" bumper sticker, and party stalwarts fixated on the case every time they saw a camera rolling.

¶7. (C) Former President Kufuor's pardon of Tsikata, along with the six former Ministers and Deputy Ministers (all of whom had completed their prison terms by the time the pardons

were announced) has rekindled the debate on the use of the judicial process to persecute political opponents. If he had hoped that his clemency would calm the waters and act as an olive branch as he left office, he badly miscalculated, for it has instead had the opposite effect. In the mind of many Ghanaians, the pardons, along with the bizarre public apologies that Kufuor made in late November for any mistakes he may have made as President, have stained the former President's credibility and tarnished his reputation. The pardons have the appearance of an open admission of guilt for the abuses of the Fast Track Courts, a perception that had already been lingering uncomfortably in the public consciousness. Why would he pardon someone found guilty of corruption? And if they were not guilty, why were they imprisoned?

¶8. (C) As for Tsikata, he has made it abundantly clear that he will not go gently into the night. In a stinging rebuke to Kufuor that grabbed headlines across the nation, Tsikata (safe in his knowledge that the NDC had regained the reins of government) rejected the pardon and blasted the former President in a hand-written letter, copies of which were conveniently supplied to all media houses. "Justice is my quest," he wrote, "and I will pursue this quest in accordance with the Constitution and laws of Ghana... Your action improperly interferes with these judicial processes and is clearly in bad faith."

¶9. (C) Tsikata's rejection of the pardon did not, however, prevent him from taking advantage of the freedom that came with it, by walking away from the hospital room where he had been incarcerated (following an asthma attack in prison) as soon as his guards had been removed. A week later, he applied for bail pending appeal of his case, and this time, under a different judge (NOTE: remember, it's a brand new day! END NOTE), bail was granted.

¶10. (C) Tsikata made his first public appearance at a "Free Tsatsu" rally on January 22. When Poloff spoke with him and his wife, who had produced a documentary on his trial, they left little doubt that his continuing pursuit of justice would be a very public--and political--process, and that their target was Kufuor. Tsikata had obviously been profoundly affected by his time in prison (a very unpleasant experience in Ghana), and despite the celebratory spirit of the rally marking his release, his bitterness toward Kufuor, Akufo-Addo, and the NPP was patently evident.

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¶11. (C) Nana Konadu Rawlings, wife of former President Rawlings, also appears bent on retribution against Kufuor after his Attorney General dropped the conspiracy and fraud case against her on the administration's final day in office. On January 16 she announced that she planned to sue Kufuor personally for persecuting her and destroying her hard-won reputation. "He chose to score cheap and shameless political points with my fundamental human rights as if he owned my life," she said. Constitutional scholars discount the possibility of taking such legal action against a former President, but Mrs. Rawlings is as unlikely as Tsikata to let the NPP off the hook in the court of public opinion.

¶12. (C) COMMENT: It is difficult to fathom what a seasoned politician like Kufuor hoped to accomplish with his misguided pardons of former opposition politicians who had already served their prison sentences. The logical explanation in the cases of Tsikata and Rawlings is that he hoped to avoid the media attention that these cases would stir up during his retirement years as they ground their way to what most likely would have been acquittals. If this was indeed his motivation, we believe he will fail. President Mills proclaimed shortly after ascending to office that he had no stomach for engaging in political witch hunts. If that is indeed the case--and we're not at all certain that it is--one of the early tests of his ability to enforce party discipline

will be convincing those who were jailed by Kufuor to forego
recriminations and move on.

TEITELBAUM